

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer U-50676.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

2. Administrative Authority: Laches -- Estoppel -- Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Lands Subject to

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease

applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

APPEARANCES: James H. W. Tseng, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James H. W. Tseng appeals from the May 6, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which rejected his simultaneous oil and gas lease offer for parcel UT-108. Tseng's simultaneous oil and gas lease application was drawn with first priority in the oil and gas drawing held on February 26, 1982. In accordance with 43 CFR 3112.4-1(a), BLM forwarded the offer to lease forms to Tseng, who returned the executed offer to BLM on March 17, 1982.

In the May 6, 1982, decision BLM stated:

Parcel UT 108 in the January 1982 Simultaneous Filings for Oil and Gas Leases listed lot 4, E 1/2 Sec. 19, T. 11 S., R. 19 E., SLM, Utah, totaling 360.45 acres in Uintah County, Utah, as available for new offers to lease. James H. W. Tseng was the drawee who received first priority.

It has come to the attention of this office that the aforesaid lands are within prior oil and gas lease U-32102 which is in good standing. Accordingly, the posting of these lands in the January 1982 filings was in error and the offer of James H. W. Tseng hereby rejected.

Identical decisions rejecting lease offers were sent on the same date to those who received second and third priority in the drawing.

On May 7, 1982, BLM issued a decision to Exxon Corporation which extended oil and gas lease U-32102. That decision stated:

This office has been notified by the Minerals Management Service that actual diligent drilling operations were being conducted across the expiration date of oil and gas leases U-16752 and U-32102, October 31, 1981, within the Kings Canyon Unit on committed acreage. In accordance with the regulations in 43 CFR 3107.2-3, these leases are extended to and including October 31, 1983, and so long thereafter as oil or gas is produced in paying quantities, provided annual rentals are timely paid.

In the statement of reasons for appeal, Tseng states that he was the first-drawn applicant for the parcel, was notified by BLM to that effect, and that his application was properly filled out and submitted. Tseng contends that his "legal right" to the parcel should not now be deprived him by a simple notice from BLM stating that a mistake was discovered after the drawing which had been held pursuant to 43 CFR Part 3100. Tseng recognizes,

however, that the land sought to be leased is not available at this time because of the preexisting rights of the current lessee. Citing the length of time involved before discovery by BLM of the mistake and his own efforts, Tseng asks that BLM assign a comparable tract of land of similar size in the same area to him or, that "the decision be changed from rejection to acceptance with the effective lease date commencing on the termination date of the lease currently held by the present lessee."

[1] With respect to offers for land embraced in an existing lease, the Board repeatedly has held that to the extent an offer to lease embraces lands presently under lease, the offer is properly rejected, regardless of whether the lease is void, voidable, or valid. Curtis Wheeler, 56 IBLA 58 (1981); David A. Provinse, 45 IBLA 111 (1980).

The offer or application to lease is a hope, or expectation, rather than a valid claim against the Government. Further, the mere filing of an oil and gas lease offer or application even at a time when the land is open to leasing does not invest the offeror or applicant with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer or application, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 30 U.S.C. 989 (1963); McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Duncan Miller, 20 IBLA 1, appeal dismissed, Miller v. Secretary of the Interior, No. 75-0905 (D.D.C. Aug. 8, 1975). In the present situation the lands were unavailable for leasing at all times notwithstanding that BLM mistakenly listed them as available and subject to simultaneous filings for oil and gas leases.

[2] Although Tseng was misled by BLM's listing of the land as available for the filing of simultaneous oil and gas lease applications, his reliance cannot confer any rights not authorized by statute or regulation. 43 CFR 1810.3(c). The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); James N. Tibbals, 58 IBLA 42 (1981).

[3] BLM cannot assign a comparable tract of land of similar size in the same area to Tseng. Under the regulations lands subject to disposition under the Mineral Leasing Act, not within a known geologic structure of a producing oil or gas field, may only be leased noncompetitively to the first-qualified applicant. 43 CFR 3101.1-1; Udall v. Tallman, supra. Further, since Exxon Corporation was entitled to, and was given, a lease extension for the lands covered by Tseng's application and offer, no acceptance of Tseng's offer can be made "with the effective lease date commencing on the termination date of the lease currently held by the present lessee." Exxon Corporation's preexisting lease was extended to "October 31, 1983 and so long thereafter

as oil or gas is produced in paying quantities, provided annual rentals are timely paid." 43 CFR 3107.2-3. Exxon Corporation's preexisting lease does not necessarily expire at any definite time in the future and even if it does expire, the lands contained within the lease would only be available for leasing pursuant to the provisions of 43 CFR Subpart 3112, Simultaneous Filings.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge